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THE CHINESE COMMUNIST LEGAL SYSTEM

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THE CHINESE COMMUNIST LEGAL SYSTEM

Tung Pi-wu, in a report on the drafting of the organic statute of the Central People's Government of the People's Republic of China, explained the Chinese Communist theory of government and legal procedure by saying: "The principle of democratic centralism is in contradistinction to the separation of powers of the old system. The parliamentary system is one by which part of the bourgeoisie in power allow another small group, the so-called opposition, to air their empty talk in conferences, while the people in power hold tight their administrative prerogatives and maintain the rule to their own advantage.... Nominal independence of the judicial power in fact similarly serves the interests of the ruling class."¹

Article 17 of the "common program of the CPPC Chinese People's Political Consultative Council" states: "All laws, decrees, and judicial systems of the Kuomintang reactionary government oppressing the people are abolished and all laws and decrees protecting the people shall be enacted and the people's judicial system shall be set up."²

1. T-1615, Pei-p'ing, September 24, 1949, UNCLASSIFIED. Tung Pi-wu is a member of the Politburo, chairman of the Committee on Political and Legal Affairs of the State Administrative Council, and vice premier of the State Administrative Council.
2. For the unofficial English version of the full text of the "Common program of the CPPC," see FBIB, Daily Report, September 30, 1949, p-PPP-10, UNCLASSIFIED.

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Before the meeting of the CPPC, conferences were set up to study legal procedures and the New China Jurisprudence Research Institute was founded. During these meetings it was decided that, "if the legislative work is to be well enacted the Chinese people's life and needs must be definitely understood; the policy and experience of the Chinese Revolution must be studied in detail; and Marxism, Leninism, and the Mao Tse-tung thought must be honestly and systematically learned. At the same time, the participants in the conference recognized that the legislative work of... New China must, on the one hand, use the legal principles and laws of the Union of Soviet Socialist Republics and of other people's democratic countries as main reference materials and examples, and, on the other hand, the various types of old laws of China and the various types of laws of capitalist countries will be used as our subsidiary reference materials and objects of criticism."¹

A newspaper article discussing the abolition of the Kuomintang legal system said: "Judges practicing law became slaves to a rigid written form of book which could not be adapted to meet Chinese society. The new law of China will be founded on the principles of Marxism, Leninism and the thought of Mao Tse-tung, that is, it will be decided by the economic relations of the new Chinese Society. The contents of the new law will grow out of actual court practice; in practice law will not only be judicial but also legislative."²

1. D-78, Poi-p'ing, July 8, 1949, Enclosure 1, UNCLASSIFIED.
2. As cited in T-432, Tientsin, June 25, 1949, UNCLASSIFIED.

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Another newspaper article explained the law and judiciary system of new China as follows: "...during the past twenty years, with the exception of casual cases where certain laws of the enemy advantageous to us were utilized in our struggle against the enemy, none of the Liberated Areas ever recognized or made use of the old laws."¹ The article goes on to explain that "those who have committed too many crimes shall never be able to escape punishment, but that those who have not committed too many shall be given a chance to repent." The article admits: "There are shortcomings existing in ourlaws and jurisdiction. For instance, as a result of war, there has been a lack of unity even in names of jurisdictional systems of various liberated areas. There have been dissensions among stipulations of various special laws at various places regarding an identical case. In some places there are only policies, programs, and no concrete legal statutes with which to settle lawsuits."²

In actual practice the Communists have taken cognizance of the old Chinese custom of mediation in the settlement of certain civil and minor criminal cases. However, instead of relying, as in the past, solely on the relatives and neighbors of the parties as mediators, members of the Communist Party and government officials are brought into the case.

1. Jen Min Jih Pao (People's Daily), Communist Party paper published in Pei-p'ing, June 28, 1949, as cited in D-112, Pei-p'ing, August 10, 1949, Enclosure 1, UNCLASSIFIED.
2. D-112, Pei-p'ing, August 10, 1949, Enclosure 1, UNCLASSIFIED.

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A variant of this method is seen in the "people's courts," which have been operating in rural areas under Communist control for some time. The accused is summoned before the court with no previous knowledge of the charges against him, has no opportunity of supplying witnesses in his defense, and may or may not be allowed the services of a lawyer. No attempt is made to check the credibility of the testimony against him, and the sentence is arbitrarily passed by the mob attending the trial.

Little is known about the conduct of the courts in the cities, although announcements have been made of the establishment of a type of people's court in some of the cities. The urban people's courts seem to differ from the rural people's courts in that they depend on the decision of a political officer ^{as in Ward case} of some sort rather than on mob decision. These courts seem to have no legal basis in the Western sense.

It has been announced in Shanghai that the legal profession has been temporarily abolished and that members of the Shanghai Bar Association are not qualified to appear in court as attorneys in either civil or criminal cases. This action is perhaps not as important as it might be in the West, however, since lawyers have never held the position of importance in China that they have in the West and are used largely by firms with Western connections. At the present time no foreigners may retain the services of attorneys.¹

1. T-1615, Pei-p'ing, September 24, 1949, UNCLASSIFIED,

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